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CLERK U.S. DISTRICT COURT  
CENTRAL DISTRICT OF CALIF.  
LOS ANGELES

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7 Robert A. Siravo and Thomas E. Swedberg

8 UNITED STATES DISTRICT COURT  
9 CENTRAL DISTRICT OF CALIFORNIA

10 NATIONAL CREDIT UNION  
ADMINISTRATION BOARD AS  
11 LIQUIDATING AGENT FOR WESTERN  
CORPORATE FEDERAL CREDIT UNION,

12 Plaintiff,

13 vs.

14 ROBERT A. SIRAVO, TODD M. LANE,  
15 ROBERT J. BURRELL, THOMAS E.  
16 SWEDBERG, and TIMOTHY T. SIDLEY,

17 Defendants.

18 ROBERT A. SIRAVO and THOMAS E.  
19 SWEDBERG,

20 Counterclaimants,

21 vs.

22 NATIONAL CREDIT UNION  
ADMINISTRATION BOARD AS  
23 LIQUIDATING AGENT FOR WESTERN  
CORPORATE FEDERAL CREDIT UNION,

24 Counterclaim Defendant.  
25  
26  
27  
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CASE NO. CV10-01597 GW  
(MANx)

**AMENDED ANSWER AND  
COUNTERCLAIMS OF  
DEFENDANTS ROBERT A.  
SIRAVO AND THOMAS E.  
SWEDBERG TO SECOND  
AMENDED COMPLAINT**

**DEMAND FOR JURY TRIAL**

1 Defendants Robert A. Siravo ("Siravo") and Thomas E. Swedberg  
2 ("Swedberg") hereby answer the Second Amended Complaint of Plaintiff National  
3 Credit Union Administration Board ("NCUA") as Liquidating Agent of Western  
4 Corporate Federal Credit Union ("WesCorp") as follows:

5 **JURISDICTION AND VENUE**

6 1. Siravo and Swedberg admit that WesCorp was a credit union with its  
7 corporate offices located in San Dimas, California, that WesCorp was placed into  
8 conservatorship by the NCUA Board on March 19, 2009, and that WesCorp was  
9 placed into involuntary liquidation on October 1, 2010. The remainder of  
10 Paragraph 1 contains legal conclusions, to which no response is required.

11 2. Paragraph 2 contains legal conclusions, to which no response is  
12 required. To the extent a response is required, Siravo and Swedberg lack  
13 knowledge or information sufficient to form a belief as to the truth of the  
14 remaining allegations of Paragraph 2 and on that basis deny those allegations.

15 3. Paragraph 3 contains legal conclusions, to which no response is  
16 required, but Siravo and Swedberg admit that the court has subject matter  
17 jurisdiction.

18 4. Paragraph 4 contains legal conclusions, to which no response is  
19 required, but Siravo and Swedberg admit that they are residents of California and  
20 are subject to the personal jurisdiction of the court.

21 5. Paragraph 5 contains legal conclusions, to which no response is  
22 required, but Siravo and Swedberg admit that venue is proper in this district.

23 **PARTIES**

24 6. Siravo and Swedberg admit that the NCUA is the liquidating agent  
25 for WesCorp.

26 7. Siravo and Swedberg admit that Siravo was the President and CEO of  
27 WesCorp from on or about May 1, 2002 to or about March 20, 2009, and that he is  
28 a resident of California.

1           8.     Siravo and Swedberg admit that Todd M. Lane ("Lane") served as  
2 Chief Financial Officer of WesCorp. Siravo and Swedberg lack knowledge or  
3 information sufficient to form a belief as to the truth of the remaining allegations  
4 of Paragraph 8 and on that basis deny those allegations.

5           9.     Siravo and Swedberg admit that Robert J. Burrell ("Burrell") served  
6 as Executive Vice President and as the Chief Investment Officer for WesCorp.  
7 Siravo and Swedberg lack knowledge or information sufficient to form a belief as  
8 to the truth of the remaining allegations of Paragraph 9 and on that basis deny  
9 those allegations.

10          10.    Siravo and Swedberg admit that Timothy T. Sidley ("Sidley") served  
11 as Vice President for Risk Assessment and as Chief Risk Officer in charge of  
12 investment credit services during his employment at WesCorp. Siravo and  
13 Swedberg lack knowledge or information sufficient to form a belief as to the truth  
14 of the remaining allegations of Paragraph 10 and on that basis deny those  
15 allegations.

16          11.    Siravo and Swedberg admit that Swedberg served as WesCorp's  
17 Director of Human Resources from October 1998 until sometime in 1999; he  
18 became the Vice President of Human Resources in 1999 until approximately April  
19 or May 2007; he served as Vice President of Strategic Planning and  
20 Organizational Development from approximately April or May 2007 to December  
21 31, 2008; he retired from WesCorp on July 2009, that he worked as an employee  
22 on a consultant basis for WesCorp from January 1, 2009 until July 2009; and he is  
23 a resident of California.

24          12.    Siravo and Swedberg admit that Robert H. Harvey, Jr. ("Harvey")  
25 was a director and the Chairman of the WesCorp board of directors, and that he is  
26 a resident of the state of Washington. Siravo and Swedberg lack knowledge or  
27 information sufficient to form a belief as to the truth of the remaining allegations  
28 of Paragraph 12 and on that basis deny those allegations.

1           13. Siravo and Swedberg admits that James P. Jordan ("Jordan") was a  
2 member of the WesCorp board of directors and was the Vice Chairman of the  
3 WesCorp board. Siravo and Swedberg lack knowledge or information sufficient  
4 to form a belief as to the truth of the remaining allegations of Paragraph 13 and on  
5 that basis deny those allegations.

6           14. Siravo and Swedberg admit that Timothy Kramer ("Kramer") was a  
7 member of the WesCorp board of directors and served as the Secretary and  
8 Treasurer of the WesCorp board. Siravo and Swedberg lack knowledge or  
9 information sufficient to form a belief as to the truth of the remaining allegations  
10 of Paragraph 14 and on that basis deny those allegations.

11           15. Siravo and Swedberg admit that Robin J. Lentz ("Lentz") was a  
12 member of the WesCorp board of directors. Siravo and Swedberg lack knowledge  
13 or information sufficient to form a belief as to the truth of the remaining  
14 allegations of Paragraph 15 and on that basis deny those allegations.

15           16. Siravo and Swedberg admit that John M. Merlo ("Merlo") was a  
16 member of the WesCorp board of directors and that he is a resident of California.  
17 Siravo and Swedberg lack knowledge or information sufficient to form a belief as  
18 to the truth of the remaining allegations of Paragraph 16 and on that basis deny  
19 those allegations.

20           17. Siravo and Swedberg admit that Gordon Dames ("Dames") was a  
21 member of the WesCorp board of directors. Siravo and Swedberg lack knowledge  
22 or information sufficient to form a belief as to the truth of the remaining  
23 allegations of Paragraph 17 and on that basis deny those allegations.

24           18. Siravo and Swedberg admit that William Cheney ("Cheney") was a  
25 member of the WesCorp board of directors. Siravo and Swedberg lack knowledge  
26 or information sufficient to form a belief as to the truth of the remaining  
27 allegations of Paragraph 18 and on that basis deny those allegations.  
28

1           19. Siravo and Swedberg admit that Warren Nakamura (“Nakamura”)  
 2 was a member of the WesCorp board of directors. Siravo and Swedberg lack  
 3 knowledge or information sufficient to form a belief as to the truth of the  
 4 remaining allegations of Paragraph 19 and on that basis deny those allegations.

5           20. Siravo and Swedberg admit that Brian Osberg (“Osberg”) was a  
 6 member of the WesCorp board of directors. Siravo and Swedberg lack knowledge  
 7 or information sufficient to form a belief as to the truth of the remaining  
 8 allegations of Paragraph 20 and on that basis deny those allegations.

9           21. Siravo and Swedberg admit that David Rhamy (“Rhamy”) was a  
 10 member of the WesCorp board of directors. Siravo and Swedberg lack knowledge  
 11 or information sufficient to form a belief as to the truth of the remaining  
 12 allegations of Paragraph 21 and on that basis deny those allegations.

13           22. Siravo and Swedberg admit that Sharon Updike (“Updike”) was a  
 14 member of the WesCorp board of directors. Siravo and Swedberg lack knowledge  
 15 or information sufficient to form a belief as to the truth of the remaining  
 16 allegations of Paragraph 22 and on that basis deny those allegations.

17           23. Siravo and Swedberg admit the allegations of Paragraph 23.

18           24. Siravo<sup>1</sup> admits that WesCorp’s Asset and Liability Committee  
 19 (“ALCO”) had oversight responsibility for WesCorp’s asset liability management  
 20 process, including investments. Siravo lacks knowledge or information sufficient  
 21 to form a belief as to the truth of the remaining allegations of Paragraph 24 and on  
 22 that basis denies those allegations, except to the extent they reference the contents  
 23 of WesCorp’s corporate policies, which speak for themselves. Siravo refers to  
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25 <sup>1</sup> Paragraphs 24 through 153 are not incorporated in either the Fifth Claim or the Sixth Claim for  
 26 Relief, which are the only claims asserted against Swedberg in the Second Amended Complaint.  
 27 Accordingly, it is not necessary for Swedberg to respond to Paragraphs 24 through 153, except  
 28 for Paragraph 42 and 43, which specifically include allegations against Swedberg. To the extent  
 that a response is required, Swedberg incorporates and adopts Siravo’s responses in this Answer  
 to the allegations set forth in Paragraph 24 through 41 and 44 through 153 of the Second  
 Amended Complaint..



1 WesCorp's corporate policies for their contents and denies any characterization  
2 inconsistent with their terms.

3 25. Siravo admits that the ALCO had responsibilities for WesCorp's  
4 investment strategies, including investments, policies and strategies, concentration  
5 limits, and the purchase and sale of securities, and directing the types and level of  
6 risk. Siravo lacks knowledge or information sufficient to form a belief as to the  
7 truth of the remaining allegations of Paragraph 25 and on that basis denies those  
8 allegations.

9 26. Siravo admits that board members attended ALCO meetings and  
10 received ALCO materials along with monthly board packages. Siravo lacks  
11 knowledge or information sufficient to form a belief as to the truth of the  
12 remaining allegations of Paragraph 26 and on that basis denies those allegations.

13 27. Siravo admits that WesCorp's budget was reviewed by the budget  
14 committee of the Board of Directors, which recommended it before it was  
15 approved by the Board. Siravo lacks knowledge or information sufficient to form  
16 a belief as to the truth of the remaining allegations of Paragraph 27 and on that  
17 basis denies those allegations.

18 28. Paragraph 28 contains legal conclusions, to which no response is  
19 required. To the extent the allegations require a response, they are denied.

20 29. Paragraph 29 contains legal conclusions, to which no response is  
21 required.

## 22 SUMMARY OF CLAIMS

23 30. Siravo admits that WesCorp was a non-profit corporate credit union,  
24 that its members were credit unions, and that it provided its members with banking  
25 and investment services for their funds. The remaining allegations of Paragraph  
26 30 contain legal conclusions, to which no response is required. To the extent the  
27 remaining allegations require a response, they are denied.  
28

1           31. Siravo admits that WesCorp was a leading corporate federal credit  
2 union and provided its members with banking and investment services for their  
3 funds. Siravo also admits that he became President and CEO of WesCorp in 2002,  
4 and that, with the knowledge and consent of the NCUA, WesCorp thereafter grew  
5 in size. Siravo denies the remaining allegations of Paragraph 31.

6           32. Siravo admits that WesCorp invested its members' funds and  
7 borrowed funds in securities, including private label mortgage backed securities  
8 ("MBS") that were not guaranteed by the United States or its agencies. Siravo  
9 denies the remaining allegations of Paragraph 32.

10          33. Siravo lacks knowledge or information sufficient to form a belief as  
11 to the truth of the allegations of Paragraph 33 and on that basis denies them.

12          34. Siravo admits that WesCorp used income from its investments to pay  
13 operating expenses. Siravo lacks knowledge or information sufficient to form a  
14 belief as to the truth of the remaining allegations of Paragraph 34 and on that basis  
15 denies those allegations.

16          35. Siravo denies the allegations of Paragraph 35.

17          36. Siravo admits that WesCorp invested in MBS, including MBS based  
18 on reduced documentation Option ARM loans. Siravo lacks knowledge or  
19 information sufficient to form a belief as to the truth of the remaining allegations  
20 of Paragraph 36 and on that basis denies those allegations.

21          37. Siravo denies the allegations of Paragraph 37.

22          38. Siravo admits that WesCorp invested in MBS, including MBS based  
23 on reduced documentation Option ARM loans. Siravo lacks knowledge or  
24 information sufficient to form a belief as to the remaining allegations of Paragraph  
25 38 and on that basis denies those allegations.

26          39. Siravo admits that WesCorp purchased AAA rated and AA rated  
27 MBS that were underwritten by the world's leading investment banks and denies  
28 the remaining allegations of Paragraph 39.

1           40. Siravo lacks knowledge or information to form a belief as to the truth  
2 of the allegations of Paragraph 39, and on that basis denies them, except to the  
3 extent they reference the contents of WesCorp's 2009 financial statements, which  
4 speak for themselves. Siravo refers to WesCorp's 2009 financial statements for  
5 their contents and denies any characterization inconsistent with their terms.

6           41. Siravo denies that WesCorp's officers failed to impose prudent  
7 concentration limits. Siravo lacks knowledge or information sufficient to form a  
8 belief as to the truth of the remaining allegations of Paragraph 41, and on that  
9 basis denies those allegations.

10           42. Siravo and Swedberg admit that their Supplemental Executive  
11 Retention Plans ("SERPs") for Siravo and other Executive participants were  
12 amended in 2007 and 2008, which increased the amount that they received upon  
13 their retirement from WesCorp. Siravo and Swedberg also admit that WesCorp  
14 entered into an agreement with Lane for the payments in 2006, 2007, and 2008 in  
15 lieu of any payments under his SERP. Siravo and Swedberg deny that they  
16 engineered amendments to the SERPs or falsely characterized the amendments,  
17 and deny that there were no *bona fide* business reasons for the payments to Lane.  
18 Siravo and Swedberg lack knowledge or information to form a belief as to the  
19 truth of the remaining allegations of Paragraph 42, and on that basis deny those  
20 allegations.

21           43. Siravo and Swedberg deny the allegations of Paragraph 43.

## 22                                   **FACTUAL ALLEGATIONS**

### 23                                   **The Federal Credit Union System**

24           44. Siravo admits that the federal credit union system is a three-tier  
25 system consisting of (1) one wholesale corporate credit union (U.S. Central  
26 Federal Credit Union); (2) retail corporate credit unions; and (3) "natural person"  
27 credit unions. Siravo further admits that the wholesale corporate credit union  
28 provides services to the retail corporate credit unions, while the retail corporate



1 credit unions provide services to both federally-chartered and state-chartered  
2 natural person credit unions. Siravo lacks knowledge or information sufficient to  
3 form a belief as to the truth of the remaining allegations of Paragraph 44 and on  
4 that basis those allegations.

5 45. Siravo admits that WesCorp was a retail corporate credit union.  
6 Siravo lacks knowledge or information sufficient to form a belief as to the truth of  
7 the remaining allegations of Paragraph 45 and on that basis denies those  
8 allegations.

9 46. Siravo admits that corporate credit unions are owned by their  
10 members and that in the case of retail corporate credit unions, the members are  
11 primarily natural person credit unions. Siravo lacks knowledge or information  
12 sufficient to form a belief as to the truth of the remaining allegations of Paragraph  
13 46 and on that basis denies those allegations.

14 47. Siravo admits that retail corporate credit unions provide services and  
15 support to their natural person credit union members. Siravo admits that retail  
16 corporate credit unions offer their natural person credit unions banking and  
17 investment services for their funds, and that these services may include settlement  
18 of transactions such as checks, ATM and credit card transactions and wire  
19 transfers, and that they allow their members to borrow funds. Siravo lacks  
20 knowledge or information sufficient to form a belief as to the truth of the  
21 remaining allegations of Paragraph 47 and on that basis denies those allegations.

22 48. Siravo lacks knowledge or information sufficient to form a belief as  
23 to the truth of the allegations of Paragraph 48 and on that basis denies them,  
24 except to the extent they reference the contents of WesCorp's website, which  
25 speaks for itself. Siravo refers to WesCorp's website for its contents and denies  
26 any characterization inconsistent with its terms.

1           49. Siravo admits that WesCorp had by-laws, which speak for  
2 themselves. Siravo refers to WesCorp's bylaws for their contents and denies any  
3 characterization inconsistent with their terms.

4           50. Siravo lacks knowledge or information sufficient to form a belief as  
5 to the truth of the allegations of Paragraph 50 and on that basis denies them.

6           51. Siravo admits that WesCorp provided services to its members, and  
7 that Chief Executive Officers of credit unions were members of its Board of  
8 Directors. Siravo lacks knowledge or information sufficient to form a belief as to  
9 the truth of the remaining allegations of Paragraph 51 and on that basis denies  
10 those allegations.

11                   **The Officer Defendants' Responsibilities and Duties**

12           52. Siravo lacks knowledge or information sufficient to form a belief as  
13 to the truth of the allegations of Paragraph 52 and on that basis denies those  
14 allegations, except to the extent the allegations reference the contents of  
15 WesCorp's by-laws and corporate policies, which speak for themselves. Siravo  
16 refers to WesCorp's by-laws and corporate policies for their contents and denies  
17 any characterization inconsistent with their terms.

18           53. Siravo admits that he served as President and CEO of WesCorp, and  
19 that he had responsibilities for overseeing WesCorp's operations and investments.  
20 Siravo denies the remaining allegations of Paragraph 53.

21           54. Siravo admits that he served as President and CEO of WesCorp. The  
22 remaining allegations of Paragraph 54 contain legal conclusions, to which no  
23 response is required. To the extent that a response is required, they are denied.

24           55. Siravo admits that Lane served as Chief Financial Officer of  
25 WesCorp, had general supervisory responsibilities, and had responsibilities for  
26 WesCorp's financial statements, financial operations, and budgets. Siravo lacks  
27 knowledge or information sufficient to form a belief as to the truth of the  
28 remaining allegations of Paragraph 55 and on that basis denies those allegations.

1           56. Siravo admits that Burrell admits that he served as Chief Investment  
2 Officer for WesCorp and had responsibilities for WesCorp's investments and for  
3 supervising WesCorp's Investment Department. Siravo lacks knowledge or  
4 information sufficient to form a belief as to the truth of the remaining allegations  
5 of Paragraph 56 and on that basis denies those allegations.

6           57. Siravo admits that Siravo worked with Lane and Burrell, among  
7 others, to manage WesCorp and implement its business strategies, including its  
8 investment strategies. Siravo lacks knowledge or information sufficient to form a  
9 belief as to the truth of the remaining allegations of Paragraph 56 and on that basis  
10 denies those allegations.

11           58. Siravo admits that Sidley served as Vice President of Risk  
12 Assessment, and that the Director of Investment Credit Services reported to  
13 Sidley. Siravo lacks knowledge or information sufficient to form a belief as to the  
14 truth of the remaining allegations of Paragraph 58 and on that basis denies those  
15 allegations.

16           59. Siravo admits that WesCorp created an Asset/Liability Staff  
17 Committee ("ALSC") and that the ALSC had responsibilities for reviewing  
18 investment security purchases and investment strategies. Siravo lacks knowledge  
19 or information sufficient to form a belief as to the truth of the remaining  
20 allegations of Paragraph 59 and on that basis denies those allegations.

21           60. Siravo admits that Siravo, Burrell and Lane served as voting members  
22 of ALCO and ALSC, and that Sidley served as a non-voting member of ALSC and  
23 a staff liaison to ALCO. Siravo denies the remaining allegations of Paragraph 60.

24                           **WesCorp's Era of Growth**

25           61. Siravo lacks knowledge or information sufficient to form a belief as  
26 to the truth of the allegations of Paragraph 61 and on that basis denies them.

27           62. Siravo admits that he became President and CEO of WesCorp in 2002  
28 and that, with the knowledge and consent of the NCUA, WesCorp thereafter grew

1 in size. Siravo lacks knowledge or information sufficient to form a belief as to the  
2 remaining allegations of Paragraph 62 and on that basis denies those allegations.

3 63. Siravo admits that, with the knowledge and consent of the NCUA,  
4 WesCorp grew in size after 2002. Siravo lacks knowledge or information  
5 sufficient to form a belief as to the truth of the allegations of Paragraph 63 and on  
6 that basis denies them.

7 64. Siravo lacks knowledge or information sufficient to form a belief as  
8 to the truth of the allegations of Paragraph 64 and on that basis denies them.

9 65. Siravo lacks knowledge or information sufficient to form a belief as  
10 to the truth of the allegations of Paragraph 65 and on that basis denies them.

11 66. Siravo lacks knowledge or information sufficient to form a belief as  
12 to the truth of the allegations of Paragraph 66 and on that basis denies them.

13 67. Siravo admits that WesCorp invested in MBS, including private label  
14 MBS that had higher yields than MBS issued by government agencies. Siravo  
15 lacks knowledge or information sufficient to form a belief as to the truth of the  
16 remaining allegations of Paragraph 67 and on that basis denies those allegations.

17 68. Siravo lacks knowledge or information sufficient to form a belief as  
18 to the truth of the allegations of Paragraph 68 and on that basis denies them,  
19 except to the extent the allegations reference the contents of WesCorp's corporate  
20 policies, which speak for themselves. Siravo refers to WesCorp's corporate  
21 policies for their contents and denies any characterization inconsistent with their  
22 terms.

23 69. Siravo lacks knowledge or information sufficient to form a belief as  
24 to the truth of the allegations of Paragraph 69 and on that basis denies them.

25 70. Siravo admits that his compensation and the compensation of other  
26 WesCorp executives increased from 2002 to 2008, but lacks knowledge or  
27 information sufficient to form a belief as to the truth of the remaining allegations  
28 of Paragraph 70 and on that basis denies those allegations.

**WesCorp's Private Label MBS Investments**

71. Siravo lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 71 and on that basis denies them.

72. Siravo lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 72 and on that basis denies them.

73. Siravo admits that WesCorp invested in AAA rated and AA rated private label MBS. Siravo lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 73 and on that basis denies those allegations, except to the extent the allegations reference the contents of the NCUA's regulations and WesCorp's investment policies, which speak for themselves. Siravo refers to the NCUA's regulations and WesCorp's investment policies for their contents and denies any characterization inconsistent with their terms.

74. Siravo admits that between 2004 and 2007 WesCorp invested in AAA rated MBS, including Collateralized Debt Obligations ("CDOs") and Option ARM MBS. Siravo lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 74 and on that basis denies those allegations.

75. Siravo admits that MBS are shares in a pool of mortgages and CDOs are shares in a pool of MBS. Siravo also admits that there are risks associated with investments in MBS and CDOs. Siravo lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 75 and on that basis denies those allegations

76. Siravo admits that WesCorp purchased CDOs. Siravo lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 76 and on that basis denies those allegations.

77. Siravo admits that Option ARM MBS are investments in Option ARM mortgages, and that Option ARM mortgages have payment terms, that



1 monthly payments can “reset,” and they can have a negative amortization. Siravo  
2 lacks knowledge or information sufficient to form a belief as to the remaining  
3 allegations of Paragraph 77 and on that basis denies those allegations.

4 78. Siravo lacks knowledge or information sufficient to form a belief as  
5 to the truth of the allegations of Paragraph 78 and on that basis denies them.

6 79. Siravo lacks knowledge or information sufficient to form a belief as  
7 to the truth of the allegations of Paragraph 79 and on that basis denies them.

8 80. Siravo admits that WesCorp invested in Option ARM MBS, including  
9 Option ARM MBS that included reduced documentation Option ARM loans.  
10 Siravo lacks knowledge or information sufficient to form a belief as to the truth of  
11 the remaining allegations of Paragraph 80 and on that basis denies those  
12 allegations.

13 81. Siravo admits that MBS investments were sold in tranches and that  
14 WesCorp invested in some AAA rated and AA rated MBS that paid a higher yield  
15 than other AAA rated and AA rated MBS. Siravo lacks knowledge or information  
16 sufficient to form a belief as to the truth of the allegations of Paragraph 81 and on  
17 that basis denies those allegations.

18 82. Siravo admits that WesCorp invested in AA rated MBS as well as  
19 AAA rated MBS. Siravo lacks knowledge or information sufficient to form a  
20 belief as to the truth of the remaining allegations of Paragraph 82 and on that basis  
21 denies those allegations.

22 83. Siravo lacks knowledge or information sufficient to form a belief as  
23 to the truth of the allegations of Paragraph 83 and on that basis denies them.

24 84. Siravo admits that WesCorp invested in AAA rated Option ARM  
25 MBS. Siravo lacks knowledge or information sufficient to form a belief as to the  
26 truth of the remaining allegations of Paragraph 84 and on that basis denies those  
27 allegations.  
28

### **WesCorp's Budgets**

85. Siravo admits that WesCorp's management proposed budgets, that budgets were considered and recommended by the Budget Committee of the Board of Directors, that budgets were adopted by WesCorp's Board of Directors, and that he worked on budgets with Lane and Burrell. Siravo lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 85 and on that basis denies those allegations.

86. Paragraph 86 contains legal conclusions, to which no response is required. To the extent the allegations require a response, they are denied.

87. Paragraph 87 contains legal conclusions, to which no response is required. To the extent the allegations require a response, Siravo lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 87 and on that basis denies them.

88. Siravo lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 88 and on that basis denies them, except to the extent the allegations reference the contents of WesCorp's budgets and executive summaries, which speak for themselves. Siravo refers to WesCorp's budgets and the executive summaries for their contents and denies any characterization inconsistent with their terms.

89. Siravo denies that Siravo, Burrell and Lane dictated the level of risk in WesCorp's investment portfolio. Siravo lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 89 and on that basis denies those allegations.

90. Siravo admits that when he was WesCorp's CEO, WesCorp's management proposed budgets that were considered and recommended by the Budget Committee and adopted by WesCorp's Board of Directors, and that he worked on the budgets with Lane and Burrell. Siravo lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations

1 of Paragraph 90 and on that basis denies those allegations, except to the extent the  
2 allegations reference the contents of WesCorp's budgets, which speak for  
3 themselves. Siravo refers to WesCorp's budgets for their contents and denies any  
4 characterization inconsistent with their terms.

5 91. Siravo denies the allegations of Paragraph 91.

6 92. Siravo lacks knowledge or information sufficient to form a belief as  
7 to the truth of the allegations of Paragraph 92 and on that basis denies them.

8 93. Siravo lacks knowledge or information sufficient to form a belief as  
9 to the truth of the allegations of Paragraph 93 and on that basis denies them.

10 94. Siravo lacks knowledge or information sufficient to form a belief as  
11 to the truth of the allegations of Paragraph 94, and on that basis denies them,  
12 except to the extent they reference the contents of WesCorp's budgets, which  
13 speak for themselves. Siravo refers to WesCorp's budgets for their contents and  
14 denies any characterization inconsistent with their terms.

15 95. Siravo lacks knowledge or information sufficient to form a belief as  
16 to the truth of the allegations of Paragraph 95, and on that basis denies them,  
17 except to the extent they reference materials presented to the Budget Committee,  
18 which speak for themselves. Siravo refers to these materials for their contents and  
19 denies any characterization inconsistent with their terms.

20 96. Siravo admits that directors attended ALCO meetings. Siravo lacks  
21 knowledge or information sufficient to form a belief as to the truth of the  
22 remaining allegations of Paragraph 96 and on that basis denies them.

23 97. Siravo lacks knowledge or information sufficient to form a belief as  
24 to the truth of the allegations of Paragraph 97 and on that basis denies them,  
25 except to the extent they reference the contents of WesCorp's ALCO books, which  
26 speak for themselves. Siravo refers to WesCorp's ALCO books for their contents  
27 and denies any characterization inconsistent with their terms.  
28

1           98. Siravo lacks knowledge or information sufficient to form a belief as  
2 to the truth of the allegations of Paragraph 98 and on that basis denies them.

3           99. Siravo lacks knowledge or information sufficient to form a belief as  
4 to the truth of the allegations of Paragraph 99 and on that basis denies them.

5           100. Paragraph 100 contains legal conclusions, to which no response is  
6 required. To the extent the allegations require a response, they are denied.

7           101. Paragraph 101 contains legal conclusions, to which no response is  
8 required. To the extent the allegations require a response, they are denied.

9           102. Siravo lacks knowledge or information sufficient to form a belief as  
10 to the truth of the allegations of Paragraph 102 and on that basis denies them.

11           103. Siravo denies the allegations of Paragraph 103.

12           104. Siravo denies the allegations of Paragraph 104.

13                           **MBS Concentration Risk**

14           105. Siravo lacks knowledge or information sufficient to form a belief as  
15 to the truth of the allegations of Paragraph 105 and on that basis denies them,  
16 except to the extent they reference the contents of the NCUA's regulations, which  
17 speak for themselves. Siravo refers to the NCUA's regulations for their contents  
18 and denies any characterization inconsistent with their terms.

19           106. Siravo lacks knowledge or information sufficient to form a belief as  
20 to the truth of the allegations of Paragraph 106 and on that basis denies them.

21           107. Siravo admits that WesCorp provided services to its members and  
22 invested their funds. Siravo lacks knowledge or information sufficient to form a  
23 belief as to the truth of the remaining allegations of Paragraph 107 and on that  
24 basis denies those allegations.

25           108. Siravo admits that WesCorp's Board of Directors was responsible for  
26 setting investment policies. Siravo lacks knowledge or information sufficient to  
27 form a belief as to the truth of the remaining allegations of Paragraph 108 and on  
28 that basis denies those allegations, except to the extent they reference the contents

1 of WesCorp's corporate and investment policies, which speak for themselves.  
2 Siravo refers to WesCorp's corporate and investment policies for their contents  
3 and denies any characterization inconsistent with their terms.

4 109. Siravo admits that the ALCO had responsibilities for reviewing  
5 WesCorp's investments and investment policies. Siravo lacks knowledge or  
6 information sufficient to form a belief as to the truth of the remaining allegations  
7 of Paragraph 109 and on that basis denies those allegations.

8 110. Siravo admits that Sidley headed WesCorp's Risk Assessment  
9 Department and Burrell headed the Investment Department. Paragraph 110  
10 contains legal conclusions, to which no response is required. To the extent the  
11 allegations require a response, Siravo lacks knowledge or information sufficient to  
12 form a belief as to the truth of the remaining allegations of Paragraph 110 and on  
13 that basis denies those allegations.

14 111. Siravo admits that WesCorp's Board of Directors adopted policies  
15 regarding its investment securities, which corporate policies speak for themselves,  
16 and that from time to time it amended its policies. Siravo refers to WesCorp's  
17 corporate policies for their contents and denies any characterization inconsistent  
18 with their terms. Siravo lacks knowledge or information sufficient to form a belief  
19 as to the truth of the remaining allegations of Paragraph 111 and on that basis  
20 denies those allegations.

21 112. Siravo lacks knowledge or information sufficient to form a belief as  
22 to the truth of the allegations of Paragraph 112 and on that basis denies them.

23 113. Siravo lacks knowledge or information sufficient to form a belief as  
24 to the truth of the allegations of Paragraph 113 and on that basis denies them.

25 114. Siravo admits that WesCorp invested in AAA rated private label  
26 MBS. Siravo lacks knowledge or information sufficient to form a belief as to the  
27 truth of the remaining allegations of Paragraph 114 and on that basis denies those  
28 allegations.



### **The Risks of Option ARM MBS**

115. Siravo lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 115 and on that basis denies those allegations, except to the extent they reference the contents of WesCorp's corporate policies, which speak for themselves. Siravo refers to WesCorp's corporate policies for their contents and denies any characterization inconsistent with their terms.

116. Siravo admits that WesCorp purchased Option ARM MBS, but denies that they were a new security type. Siravo lacks information or knowledge sufficient to form a belief as to the truth of the remaining allegations of Paragraph 116 and on that basis denies those allegations.

117. Siravo admits that WesCorp purchased Option ARM MBS with the approval of WesCorp's Board of Directors and the ALCO, but denies that they were a new security type. Siravo lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 117 and on that basis denies those allegations.

118. Siravo admits that, with the approval of WesCorp's Board of Directors and the ALCO, WesCorp purchased Option ARM MBS, but denies that they were a new security type. Siravo lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 118 and on that basis denies those allegations.

119. Siravo denies Option ARM MBS were a new type of security. Siravo lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 119 and on that basis denies those allegations.

120. Siravo lacks information or knowledge sufficient to form a belief as to the truth of the allegations of Paragraph 120 and on that basis denies them.

121. Siravo lacks information or knowledge sufficient to form a belief as to the truth of the allegations of Paragraph 121 and on that basis denies them.

1 122. Siravo lacks information or knowledge sufficient to form a belief as  
2 to the truth of the allegations of Paragraph 122 and on that basis denies them.

3 123. Siravo lacks knowledge or information sufficient to form a belief as  
4 to the truth of the allegations of Paragraph 123 and on that basis denies them.

5 124. Paragraph 124 contains legal conclusions, to which no response is  
6 required. To the extent the allegations require a response, they are denied. Siravo  
7 denies the remaining allegations of Paragraph 124.

8 125. Siravo lacks knowledge or information sufficient to form a belief as  
9 to the truth of the allegations of Paragraph 125 and on that basis denies them.

10 126. Siravo lacks information or knowledge sufficient to form a belief as  
11 to the truth of the allegations of Paragraph 126 and on that basis denies them.

12 127. Paragraph 127 contains legal conclusions, to which no response is  
13 required. To the extent the allegations require a response, they are denied.

14 128. Siravo admits that WesCorp purchased AAA rated and AA rated  
15 MBS, but denies that the Officer Defendants did not monitor concentrations of  
16 Option ARM MBS. Siravo lacks knowledge or information sufficient to form a  
17 belief as to the truth of the remaining allegations of Paragraph 128 and on that  
18 basis denies those allegations.

19 129. Siravo denies that WesCorp was unaware of the concentrations of  
20 MBS. Siravo lacks information or knowledge sufficient to form a belief as to the  
21 truth of the remaining allegations of Paragraph 129 and on that basis denies those  
22 allegations.

23 130. Siravo denies that WesCorp was unaware of the concentrations of  
24 MBS. Siravo lacks information or knowledge sufficient to form a belief as to the  
25 truth of the remaining allegations of Paragraph 130 and on that basis denies those  
26 allegations.

27 131. Siravo admits that the Officer Defendants and Directors were aware  
28 of the risks of MBS investments. Siravo lacks information or knowledge

1 sufficient to form a belief as to the truth of the remaining allegations of Paragraph  
2 131 and on that basis denies them.

3 132. Siravo admits that Burrell served as the officer in charge of the  
4 Investment Department and the Chief Investment Officer and that Sidley served as  
5 the officer in charge of the Investment Credit Services Department and as the  
6 Chief Risk Officer. Paragraph 132 contains legal conclusions, to which no  
7 response is required. To the extent these allegations require a response, they are  
8 denied. Siravo lacks knowledge or information sufficient to form a belief as to the  
9 truth of the remaining allegations of Paragraph 132 and on that basis denies those  
10 allegations.

11 133. Siravo denies the allegations of Paragraph 133.

12 **The Risks in WesCorp's Portfolio**

13 134. Siravo lacks information or knowledge sufficient to form a belief as  
14 to the truth of the allegations of Paragraph 134 and on that basis denies them.

15 135. Siravo admits that Officer Defendants and Directors attended ALCO  
16 meetings at which there were presentations about the economy, investments and  
17 WesCorp's investment strategy. Siravo lacks information or knowledge sufficient  
18 to form a belief as to the truth of the remaining allegations of Paragraph 135 and  
19 on that basis denies those allegations.

20 136. Siravo lacks information or knowledge sufficient to form a belief as  
21 to the truth of the allegations of Paragraph 136 and on that basis denies them.

22 137. Siravo admits that Officer Defendants and Directors attended ALCO  
23 meetings at which there were presentations on interest rates and the housing  
24 market. Siravo lacks information or knowledge sufficient to form a belief as to the  
25 truth of the remaining allegations of Paragraph 137 and on that basis denies those  
26 allegations.

27 138. Siravo lacks knowledge or information sufficient to form a belief as  
28 to the truth of the allegations in Paragraph 138 and on that basis denies them,

1 except to the extent they reference the contents of WesCorp's ALCO books, which  
2 speak for themselves. Siravo refers to WesCorp's ALCO books for their contents  
3 and denies any characterization inconsistent with its terms.

4 139. Siravo lacks knowledge or information sufficient to form a belief as  
5 to the truth of the allegations in Paragraph 139 and on that basis denies them,  
6 except to the extent they reference the contents of WesCorp's ALCO books, which  
7 speak for themselves. Siravo refers to WesCorp's ALCO books for their contents  
8 and denies any characterization inconsistent with its terms.

9 140. Siravo lacks information or knowledge sufficient to form a belief as  
10 to the truth of the allegations of Paragraph 140 and on that basis denies them.

11 141. Siravo lacks knowledge or information sufficient to form a belief as  
12 to the truth of the allegations in Paragraph 141 and on that basis denies them,  
13 except to the extent they reference the contents of WesCorp's ALCO books, which  
14 speak for themselves. Siravo refers to WesCorp's ALCO books for their contents  
15 and denies any characterization inconsistent with its terms.

16 142. Siravo lacks knowledge or information sufficient to form a belief as  
17 to the truth of the allegations in Paragraph 142 and on that basis denies them,  
18 except to the extent they reference the contents of WesCorp's ALCO books, which  
19 speak for themselves. Siravo refers to WesCorp's ALCO books for their contents  
20 and denies any characterization inconsistent with its terms.

21 143. Siravo admits that WesCorp stopped purchasing AA rated MBS, and  
22 that it continued to purchase AAA rated MBS in 2007. Siravo lacks information  
23 or knowledge sufficient to form a belief as to the truth of the remaining allegations  
24 of Paragraph 143 and on that basis denies those allegations.

25 144. Siravo admits that WesCorp continued to purchase AAA rated Option  
26 ARM MBS in 2007 and that it stopped purchasing private label MBS in 2007.  
27 Paragraph 144 contains legal conclusions, to which no response is required. To  
28

1 the extent these allegations require a response, they are denied. Siravo denies the  
2 remaining allegations of Paragraph 144.

3 145. Paragraph 145 contains legal conclusions, to which no response is  
4 required. To the extent the allegations require a response, they are denied.

5 146. Siravo admits that WesCorp continued to purchase AAA rated Option  
6 ARM MBS in 2007 and that it stopped purchasing private label MBS in 2007.

7 Paragraph 146 contains legal conclusions, to which no response is required. To  
8 the extent these allegations require a response, they are denied. Siravo lacks  
9 information or knowledge sufficient to form a belief as to the truth of the  
10 remaining allegations of Paragraph 146 and on that basis denies those allegations.

11 147. Siravo lacks information or knowledge sufficient to form a belief as  
12 to the truth of the allegations of Paragraph 147 and on that basis denies them,  
13 except to the extent they reference the contents of the NCUA's regulations, which  
14 speak for themselves. Siravo refers to the NCUA's regulations for their contents  
15 and denies any characterization inconsistent with their terms. Paragraph 147 also  
16 contains legal conclusions, to which no response is required. To the extent these  
17 allegations require a response, they are denied.

### 18 **WesCorp's Collapse**

19 148. Siravo lacks information or knowledge sufficient to form a belief as  
20 to the truth of the allegations of Paragraph 148 and on that basis denies them.

21 149. Siravo denies that the Officer Defendants or the Director Defendants  
22 caused WesCorp's collapse. Siravo lacks knowledge or information sufficient to  
23 form a belief as to the truth of the remaining allegations of Paragraph 149 and on  
24 that basis denies those allegations.

25 150. Siravo lacks information or knowledge sufficient to form a belief as  
26 to the truth of the allegations of Paragraph 150 and on that basis denies them.

27 151. Siravo lacks information or knowledge sufficient to form a belief as  
28 to the truth of the allegations of Paragraph 151 and on that basis denies them.



1           152. Siravo lacks information or knowledge sufficient to form a belief as  
2 to the truth of the allegations of Paragraph 152 and on that basis denies them.

3           153. Siravo lacks information or knowledge sufficient to form a belief as  
4 to the truth of the allegations of Paragraph 153 and on that basis denies them.

5                                   **The SERP Payments**

6           154. Siravo and Swedberg admit that in November 2001, WesCorp's  
7 Board of Directors authorized a Supplemental Retirement Plan (the "Executive  
8 SERP") for certain WesCorp executives, and that Swedberg was a participant in  
9 the plan.

10          155. Siravo and Swedberg admit that the Executive SERP was part of an  
11 Executive Retention Program "to provide certain benefits" and "a measure of  
12 peace of mind for certain executives of WesCorp," and that the Executive SERP  
13 provided participants with a lump sum payment at their expected retirement dates  
14 if they had been employed at WesCorp for at least 10 years and had been a  
15 participant in the plan for at least 5 years at the time of their retirement from  
16 WesCorp. Siravo and Swedberg deny the remaining allegations of Paragraph 155.

17          156. Siravo and Swedberg admit that, effective May 1, 2002, WesCorp  
18 agreed to provide benefits to Siravo under a CEO/President Retention Program,  
19 and that these benefits included a lump sum payment under a Supplemental  
20 Retirement Plan (the "CEO SERP") that was payable on May 1, 2008 (the  
21 "President/CEO Retirement Date"), provided that Siravo was continuously  
22 employed by WesCorp until that date. Siravo and Swedberg deny the remaining  
23 allegations of Paragraph 156.

24          157. Siravo and Swedberg admit that the Executive SERP and CEO SERP  
25 both provided for lump sum benefits determined by a formula where "C is Final  
26 Compensation as defined herein;" "Final Compensation" is defined as "monthly  
27 base salary paid most recently while [the President/CEO or the Executive] is a  
28

1 participant in the Program, multiplied by twelve (12);” and the formula included a  
2 40% gross-up for taxes.

3 158. Siravo and Swedberg admit that in the fall of 2007, along with  
4 Directors Robert Harvey and John Merlo, they noticed that the lump sum formula  
5 in Siravo’s CEO SERP did not account for changes in the nature of the  
6 compensation received by WesCorp Executives since the Executive SERP was  
7 adopted in 2001, and that the percentage of the gross-up for taxes did not account  
8 for all of the taxes owed on the lump sum payments. Siravo and Swedberg also  
9 admit that, with the concurrence of Harvey and Merlo, they proposed amendments  
10 to the CEO SERP to (1) change the definition of “Final Compensation” to include  
11 all compensation received by Siravo and (2) increase the tax gross-up to 67%.  
12 Siravo and Swedberg deny the remaining allegations of Paragraph 158.

13 159. Siravo and Swedberg admit that Swedberg prepared materials that  
14 explained the proposed amendments to the CEO SERP; that he communicated  
15 with members of WesCorp’s Board of Directors regarding the proposed  
16 amendments; and that he was no longer the Director of Human Resources for  
17 WesCorp, but retained responsibility for Executive Compensation matters with the  
18 concurrence of the new Vice President of Human Resources when he  
19 communicated with the directors regarding the amendments. Siravo and  
20 Swedberg deny the remaining allegations of Paragraph 159.

21 160. Siravo and Swedberg admit that in a memorandum dated November  
22 2, 2007, Swedberg advised Robert Harvey, the Chairman of WesCorp’s Board of  
23 Directors, that “[i]n preparing for the May 2008 SERP distribution to Bob Siravo,  
24 we noticed that there were two administrative errors in the current 457(f) plan  
25 document that are not consistent with the intent of the program when it was  
26 initially developed.” Siravo and Swedberg deny the remaining allegations of  
27 Paragraph 160.  
28

1           161. Siravo and Swedberg admit that Swedberg, along with Siravo and  
2 Chairman of the Board Harvey and Board member Merlo, developed a proposal to  
3 amend the CEO SERP. Siravo and Swedberg lack information or knowledge  
4 sufficient to form a belief as to the truth of the remaining allegations of Paragraph  
5 161 and on that basis deny those allegations.

6           162. Siravo and Swedberg admit that on or about October 19, 2007,  
7 Swedberg prepared a draft of a PowerPoint presentation for WesCorp's Board of  
8 Directors, which he sent to Siravo and which speaks for itself. Siravo and  
9 Swedberg refer to the PowerPoint for its contents and deny any characterization  
10 inconsistent with its terms.

11           163. Siravo and Swedberg deny the allegations of Paragraph 163.

12           164. Siravo and Swedberg admit that Swedberg discussed proposed  
13 amendments to the CEO SERP with John Merlo, who suggested changing the  
14 presentation from a PowerPoint to a memorandum. Siravo and Swedberg lack  
15 information or knowledge sufficient to form a belief as to the truth of the  
16 remaining allegations of Paragraph 164 and on that basis deny those allegations.

17           165. Siravo and Swedberg deny the allegations of Paragraph 165.

18           166. Siravo and Swedberg admit that in October 2007, Swedberg  
19 discussed proposed amendments to the CEO SERP with Robert Harvey and John  
20 Merlo, and that Exhibit 1 to the Second Amended Complaint is a true and correct  
21 copy of a memorandum dated November 2, 2007 that Swedberg prepared and sent  
22 to Harvey, which memorandum speaks for itself. Siravo and Swedberg refer to the  
23 memorandum for its contents and deny any characterization inconsistent with its  
24 terms. Siravo and Swedberg lack information or knowledge sufficient to form a  
25 belief as to the truth of the remaining allegations of Paragraph 166 and on that  
26 basis deny those allegations.

27           167. Siravo and Swedberg deny the allegations of Paragraph 167.

28           168. Siravo and Swedberg deny the allegations of Paragraph 168.

1           169. Siravo and Swedberg admit that Siravo's employment agreement  
2 provided for the possibility of a bonus; that the amount of Siravo's lump sum  
3 payment under the CEO SERP, effective May 1, 2002, was based upon the  
4 Siravo's "Final Compensation," which was defined as the "monthly base salary  
5 paid most recently while the President/CEO is a participant in the Program,  
6 multiplied by twelve (12);" that the gross-up percentage in that CEO SERP was  
7 the same as the percentage in the original Executive SERP. Siravo and Swedberg  
8 deny the remaining allegations of Paragraph 169.

9           170. Siravo and Swedberg admit that Chairman Harvey approved the  
10 proposed amendments to the CEO SERP and submitted it to other members of the  
11 WesCorp board's executive committee, who also approved it. Siravo and  
12 Swedberg lack information or knowledge sufficient to form a belief as to the truth  
13 of the remaining allegations of Paragraph 170 and on that basis deny those  
14 allegations.

15           171. Siravo and Swedberg admit that WesCorp's Board of Directors  
16 approved amendments to the CEO SERP. Siravo and Swedberg lack information  
17 or knowledge sufficient to form a belief as to the truth of the remaining allegations  
18 of Paragraph 171 and on that basis deny those allegations.

19           172. Siravo and Swedberg admit that WesCorp's Board of Directors  
20 adopted a resolution authorizing changes to the CEO SERP, which resolution  
21 speaks for itself. Siravo and Swedberg refer to the resolution for its contents and  
22 deny any characterization inconsistent with its terms.

23           173. Siravo and Swedberg admit that Robert Harvey, as Chairman of  
24 WesCorp's Board of Directors, executed an amendment to the CEO SERP that  
25 was prepared by Swedberg, which amendment speaks for itself. Siravo and  
26 Swedberg refer to the amendment for its contents and deny any characterization  
27 inconsistent with its terms. Siravo and Swedberg deny the remaining allegations  
28 of Paragraph 173.

1           174. Paragraph 174 contains legal conclusions, to which no response is  
2 required. To the extent these allegations require a response, they are denied.  
3 Siravo and Swedberg deny the remaining allegations of Paragraph 174.

4           175. Siravo and Swedberg admit that under the President/CEO Retention  
5 Program, Siravo's President/CEO Retirement Date was May 1, 2008; that he  
6 received a lump sum SERP payment on or about May 13, 2008 of \$6,881,401; that  
7 the amount he received was more than he would have received under the CEO  
8 SERP before it was amended; and that he continued to serve as President/CEO of  
9 WesCorp until on or about March 20, 2009. Siravo and Swedberg lack  
10 information or knowledge sufficient to form a belief as to the truth of the  
11 remaining allegations of Paragraph 175 and on that basis deny those allegations.

12           176. Siravo and Swedberg admit that Swedberg worked on amendments to  
13 the Executive SERP, which amendments speak for themselves. Siravo and  
14 Swedberg refer to the amendments for their contents and deny any characterization  
15 inconsistent with their terms.

16           177. Siravo and Swedberg admit that on or about June 24, 2008, Siravo  
17 presented amendments to the Executive SERP to the WesCorp Board of Directors,  
18 and the Board of Directors adopted a resolution approving the amendments, which  
19 resolution speaks for itself. Siravo and Swedberg refer to the resolution for its  
20 contents and deny any characterization inconsistent with its terms.

21           178. Siravo and Swedberg admit that Swedberg retired from WesCorp at  
22 the end of 2008, and that on January 6, 2009, he received a lump sum SERP of  
23 \$1,223,962, which was more than the he would have received under the CEO  
24 SERP before it was amended. Siravo and Swedberg lack information or  
25 knowledge sufficient to form a belief as to the truth of the remaining allegations of  
26 Paragraph 178 and on that basis deny those allegations.

27           179. Siravo and Swedberg admit that Lane was a participant in the  
28 Executive SERP and that he wanted to leave his employment at WesCorp before



1 his expected retirement date under the Executive SERP. Siravo and Swedberg  
2 lack information or knowledge sufficient to form a belief as to the truth of the  
3 remaining allegations of Paragraph 179 and on that basis deny those allegations.

4 180. Siravo and Swedberg admit that Lane and Siravo executed an Early  
5 Payout Agreement, which agreement speaks for itself. Siravo and Swedberg refer  
6 to the agreement for its contents and deny any characterization inconsistent with  
7 its terms. Siravo and Swedberg lack information or knowledge sufficient to form  
8 a belief as to the truth of the remaining allegations of Paragraph 180 and on that  
9 basis deny those allegations.

10 181. Siravo and Swedberg deny the allegations in Paragraph 181.

11 182. Siravo and Swedberg admit that Lane received payments in 2006,  
12 2007 and 2008 in addition to his base compensation and bonus and that he left his  
13 employment with WesCorp in 2008. Siravo and Swedberg lack information or  
14 knowledge sufficient to form a belief as to the truth of the remaining allegations of  
15 Paragraph 182 and on that basis deny those allegations.

16 **FIRST CLAIM FOR RELIEF**

17 (Breach of Fiduciary Duties – Against the Officer Defendants)

18 183. Siravo and Swedberg incorporate by reference their responses to  
19 paragraphs 1 through 153 as though set forth in full. Swedberg is not named as a  
20 defendant to this Claim and accordingly no response is required to paragraphs 184  
21 through 198. To the extent the allegations require a response to paragraphs 184  
22 through 198, Swedberg lacks information or knowledge sufficient to form a belief  
23 as to the truth of the allegations, and on that basis denies them.

24 184. Paragraph 184 contains legal conclusions, to which no response is  
25 required. To the extent the allegations require a response, they are denied.

26 185. Paragraph 185 contains legal conclusions, to which no response is  
27 required. To the extent the allegations require a response, they are denied.  
28

1           186. Paragraph 186 contains legal conclusions, to which no response is  
2 required. To the extent the allegations require a response, they are denied.

3           187. Paragraph 187 contains legal conclusions, to which no response is  
4 required. To the extent the allegations require a response, they are denied.

5           188. Paragraph 188 contains legal conclusions, to which no response is  
6 required. To the extent the allegations require a response, they are denied.

7           189. Paragraph 189 contains legal conclusions, to which no response is  
8 required. To the extent the allegations require a response, Siravo lacks  
9 information or knowledge sufficient to form a belief as to the truth of the  
10 allegations of Paragraph 189 and on that basis they are denied.

11           190. Paragraph 190 contains legal conclusions, to which no response is  
12 required. To the extent the allegations require a response, Siravo lacks  
13 information or knowledge sufficient to form a belief as to the truth of the  
14 allegations of Paragraph 190 and on that basis they are denied.

15           191. Paragraph 191 contains legal conclusions, to which no response is  
16 required. To the extent the allegations require a response, they are denied.

17           192. Paragraph 192 contains legal conclusions, to which no response is  
18 required. To the extent the allegations require a response, they are denied. Siravo  
19 denies that he breached any duties that he owed to WesCorp. Siravo lacks  
20 information or knowledge sufficient to form a belief as to the truth of the  
21 remaining allegations of Paragraph 192 and on that basis denies those allegations.

22           193. Paragraph 193 contains legal conclusions, to which no response is  
23 required. To the extent the allegations require a response, they are denied. Siravo  
24 denies that he breached any duties that he owed to WesCorp. Siravo lacks  
25 information or knowledge sufficient to form a belief as to the truth of the  
26 remaining allegations of Paragraph 193 and on that basis denies those allegations.

27           194. Paragraph 194 contains legal conclusions, to which no response is  
28 required. To the extent the allegations require a response, Siravo lacks

1 information or knowledge sufficient to form a belief as to the truth of the  
2 allegations of Paragraph 194 and on that basis they are denied.

3 195. Paragraph 195 contains legal conclusions, to which no response is  
4 required. To the extent the allegations require a response, they are denied. Siravo  
5 lacks information or knowledge sufficient to form a belief as to the truth of the  
6 remaining allegations of Paragraph 195 and on that basis denies those allegations.

7 196. Paragraph 196 contains legal conclusions, to which no response is  
8 required. To the extent the allegations require a response, they are denied. Siravo  
9 denies that he breached any duties that he owed to WesCorp. Siravo lacks  
10 information or knowledge sufficient to form a belief as to the truth of the  
11 remaining allegations of Paragraph 192 and on that basis denies those allegations.

12 197. Siravo denies the allegations of Paragraph 197.

13 198. Siravo denies the allegations of Paragraph 198.

14 **SECOND CLAIM FOR RELIEF**

15 (Breach of Fiduciary Duties – Against Defendants Rhamy, Updike, Dames, Osberg,  
16 Longson and Harvey)

17 199. Siravo and Swedberg incorporate by reference their responses to  
18 paragraphs 1 through 153 as though set forth in full. Siravo and Swedberg are not  
19 named as defendants to this Claim and accordingly no response is required to  
20 paragraphs 200 through 205. To the extent the allegations require a response to  
21 paragraphs 200 through 205, Siravo and Swedberg lack information or knowledge  
22 sufficient to form a belief as to the truth of the allegations, and on that basis deny  
23 them.

24 200. Siravo and Swedberg are not named as defendants to this Claim and  
25 accordingly no response is required.

26 201. Siravo and Swedberg are not named as defendants to this Claim and  
27 accordingly no response is required.  
28

1           202. Siravo and Swedberg are not named as defendants to this Claim and  
2 accordingly no response is required.

3           203. Siravo and Swedberg are not named as defendants to this Claim and  
4 accordingly no response is required.

5           204. Siravo and Swedberg are not named as defendants to this Claim and  
6 accordingly no response is required.

7           205. Siravo and Swedberg are not named as defendants to this Claim and  
8 accordingly no response is required.

9                           **THIRD CLAIM FOR RELIEF**

10           (Breach of Fiduciary Duties – Against Defendants Jordan, Nakamura, Cheney,  
11                           Rhamy, Kramer, Lentz, and Osberg)

12           206. Siravo and Swedberg incorporate by reference their responses to  
13 paragraphs 1 through 153 as though set forth in full. Siravo and Swedberg are not  
14 named as defendants to this Claim and accordingly no response is required to  
15 paragraphs 207 through 212. To the extent the allegations require a response to  
16 paragraphs 207 through 212, Siravo and Swedberg lack information or knowledge  
17 sufficient to form a belief as to the truth of the allegations, and on that basis deny  
18 them.

19           207. Siravo and Swedberg are not named as defendants to this Claim and  
20 accordingly no response is required.

21           208. Siravo and Swedberg are not named as defendants to this Claim and  
22 accordingly no response is required.

23           209. Siravo and Swedberg are not named as defendants to this Claim and  
24 accordingly no response is required.

25           210. Siravo and Swedberg are not named as defendants to this Claim and  
26 accordingly no response is required.

27           211. Siravo and Swedberg are not named as defendants to this Claim and  
28 accordingly no response is required.

1           212. Siravo and Swedberg are not named as defendants to this Claim and  
2 accordingly no response is required.

3                           **FOURTH CLAIM FOR RELIEF**

4                   (Breach of Fiduciary Duties – Against All Director Defendants)

5           213. Siravo and Swedberg incorporate by reference their responses to  
6 paragraphs 1 through 153 as though set forth in full. Siravo and Swedberg are not  
7 named as defendants to this Claim and accordingly no response is required to  
8 paragraphs 214 through 220. To the extent the allegations require a response to  
9 paragraphs 214 through 220, Siravo and Swedberg lack information or knowledge  
10 sufficient to form a belief as to the truth of the allegations, and on that basis deny  
11 them.

12           214. Siravo and Swedberg are not named as defendants to this Claim and  
13 accordingly no response is required.

14           215. Siravo and Swedberg are not named as defendants to this Claim and  
15 accordingly no response is required.

16           216. Siravo and Swedberg are not named as defendants to this Claim and  
17 accordingly no response is required.

18           217. Siravo and Swedberg are not named as defendants to this Claim and  
19 accordingly no response is required.

20           218. Siravo and Swedberg are not named as defendants to this Claim and  
21 accordingly no response is required.

22           219. Siravo and Swedberg are not named as defendants to this Claim and  
23 accordingly no response is required.

24           220. Siravo and Swedberg are not named as defendants to this Claim and  
25 accordingly no response is required.

26                           **FIFTH CLAIM FOR RELIEF**

27                   (Breach of Fiduciary Duty – Against Defendants Siravo and Swedberg)



221. Siravo and Swedberg incorporate by reference paragraphs 1 through 23 and 154 through 178 as though set forth in full.

222. Paragraph 222 contains legal conclusions to which no response is required. To the extent the allegations require a response, they are denied.

223. Siravo and Swedberg deny the allegations of Paragraph 223.

224. Paragraph 224 contains legal conclusions to which no response is required. To the extent the allegations require a response, they are denied

225. Siravo and Swedberg deny the allegations of Paragraph 225.

226. Siravo and Swedberg deny the allegations of Paragraph 226.

### **SIXTH CLAIM FOR RELIEF**

(Fraud -- Against Defendants Siravo and Swedberg)

227. Siravo and Swedberg incorporate by reference paragraphs 1 through 23, 154 through 178, and 222 through 226, as though set forth in full.

228. Paragraph 228 contains legal conclusions to which no response is required. To the extent the allegations require a response, they are denied.

229. Siravo and Swedberg admit Exhibit 1 to the Second Amended Complaint is a true and correct copy of a memorandum dated November 2, 2007, that Swedberg sent to Robert Harvey, the Chairman of WesCorp's Board of Directors. Siravo and Swedberg also admit that on or about June 24, 2008, Siravo sent a similar memorandum. The memoranda sent by Siravo and Swedberg speak for themselves. Siravo and Swedberg refer to the memoranda for their contents and deny any characterization inconsistent with their terms. Siravo and Swedberg deny the remaining allegations in Paragraph 229.

230. Siravo and Swedberg deny the allegations in Paragraph 230.

231. Siravo and Swedberg deny the allegations in Paragraph 231.

232. Paragraph 228 contains legal conclusions to which no response is required. To the extent the allegations require a response, they are denied.

233. Siravo and Swedberg deny the allegations in Paragraph 233.

1           234. Siravo and Swedberg deny the allegations in Paragraph 234.

2                           **SEVENTH CLAIM FOR RELIEF**

3                           (Breach of Fiduciary Duty -- Against Defendant Siravo)

4           235. Siravo and Swedberg incorporate by reference paragraphs 1 through  
5 23, 154 through 182, inclusive as though set forth in full. Swedberg is not named  
6 as a defendant to this Claim and accordingly no response is required to paragraphs  
7 236 through 239. To the extent the allegations require a response to paragraphs  
8 236 through 239, Swedberg lacks information or knowledge sufficient to form a  
9 belief as to the truth of the allegations, and on that basis denies them.

10          236. Paragraph 236 contains legal conclusions to which no response is  
11 required. To the extent that a response is required, the allegations are denied.

12          237. Paragraph 237 contains legal conclusions to which no response is  
13 required. To the extent that a response is required, the allegations are denied.

14          238. Siravo denies the allegations in Paragraph 238.

15          239. Siravo denies the allegations in Paragraph 239.

16                           **EIGHTH CLAIM FOR RELIEF**

17                           (Unjust Enrichment -- Against Defendant Lane)

18          240. Siravo and Swedberg incorporate by reference their responses to  
19 paragraphs 1 through 153, 154 through 182, and 236 through 239 as though set  
20 forth in full. Siravo and Swedberg are not named as defendants to this Claim and  
21 accordingly no response is required to paragraphs 241 through 244. To the extent  
22 the allegations require a response to paragraphs 241 through 244, Siravo and  
23 Swedberg lack information or knowledge sufficient to form a belief as to the truth  
24 of the allegations, and on that basis deny them.

25          241. Siravo and Swedberg are not named as defendants to this Claim and  
26 accordingly no response is required.

27          242. Siravo and Swedberg are not named as defendants to this Claim and  
28 accordingly no response is required.

243. Siravo and Swedberg are not named as defendants to this Claim and accordingly no response is required.

244. Siravo and Swedberg are not named as defendants to this Claim and accordingly no response is required.

### **AFFIRMATIVE DEFENSES**

As for their affirmative defenses, Siravo and Swedberg allege as follows:

#### **FIRST AFFIRMATIVE DEFENSE**

##### (Ratification, Consent, Approval, Acquiescence and Participation by the NCUA)

245. The NCUA's Claims are barred, in whole or in part, because the NCUA, with full knowledge of Siravo's acts and omissions, consented to, approved of, acquiesced in, authorized and/or ratified each and every act or omission that the SAC alleges to be improper, including but not limited to those related to WesCorp's investment strategies, risk assessment efforts, and purchases of MBS securities.

246. The NCUA's Office of Corporate Credit Unions ("OCCU") provided supervision and oversight of WesCorp, including of its investment strategies and risk management. That supervision and oversight of WesCorp included but is not limited to its on-site examinations of WesCorp; its review of ALCO and Board of Directors books and meeting minutes; its approval of WesCorp's investments, investment strategies, policies, and procedures; its approval of the decisions and actions of WesCorp's management with full knowledge of WesCorp's investment strategies and MBS investments; its authorization of investments by WesCorp in securities rated by the rating agencies as low as BBB; and its preparation of yearly examination reports analyzing and assessing WesCorp's operations.

247. As the NCUA was aware at all relevant times, WesCorp had a long history of purchasing securities with the same type of collateral -- mortgages -- as Option ARM MBS. On information and belief, the NCUA and OCCU examiners knew of and acquiesced in WesCorp's investments in Option ARM MBS and

1 never suggested that Option ARM MBS were a “new” security type which  
2 WesCorp should review as such.

3 248. The NCUA, through its OCCU examiners, consistently approved of  
4 WesCorp’s investment strategies and investment concentrations, including  
5 WesCorp’s investments in Option ARM MBS, lower tranche MBS, and reduced  
6 documentation MBS.

7 249. On information and belief, the NCUA also knew and approved of  
8 WesCorp’s investment related and credit risk management policies and  
9 procedures, including, without limitation, the policies and procedures for limiting  
10 investments to primarily high grade securities with AA and AAA ratings, for  
11 conducting credit reviews or proposed security purchases prior to purchasing, for  
12 conducting credit reviews on newly-issued security types, for conducting annual  
13 credit reviews on existing securities, for preparing monthly watch lists and  
14 overseeing securities that were underperforming, for creating concentration limits,  
15 and for publishing monthly reports on credit status.

16 250. On information and belief, the NCUA knew and approved of  
17 WesCorp’s investment strategies and risk management efforts.

18 251. In those instances, to the extent there were any, where the NCUA  
19 raised any concerns regarding WesCorp’s risk assessment efforts, WesCorp  
20 promptly addressed those concerns, and the NCUA and the WesCorp Board  
21 subsequently approved of WesCorp’s remedial efforts.

22 252. Moreover, as late as July 2010, the NCUA believed and issued public  
23 statements indicating that AA and AAA rated private-label MBS were safe and  
24 appropriate investments. In light of the foregoing, the NCUA knowingly  
25 consented to, approved of, acquiesced in, authorized and/or ratified each and every  
26 activity that the NCUA now challenges as improper.

**SECOND AFFIRMATIVE DEFENSE**

(Ratification, Consent, Approval, by WesCorp Directors)

253. Siravo and Swedberg incorporate by reference and re-allege each and every allegation contained in paragraphs 245-252 as though fully set forth herein

254. The NCUA's Claims are barred, in whole or in part, because WesCorp's Board of Directors and/or committees thereof (the "Board"), with full knowledge of Swedberg and Siravo's acts and omissions, consented to, approved of, acquiesced in, authorized and/or ratified each and every act or omission that the SAC alleges to be improper.

255. As to the First Claim for Relief related to MBS investments, WesCorp made no investments, including but not limited to those challenged in this action, without first making full disclosure to the Board and obtaining the approval of the Board.

256. WesCorp changed no concentration limits or other investment limitations or investment policies without first making full disclosure to the Board and obtaining the approval of the Board.

257. To the extent (if at all), Siravo did anything alleged in the SAC as the basis for the First Claim for Relief, he did so only after making disclosure to, and receiving the permission of the Board.

258. The WesCorp Board provided supervision and oversight of WesCorp, including of its investment strategies and risk assessment. WesCorp and the Board's supervision was effected by, among other things, implementing policies to direct WesCorp's activities and its investments, by receiving and reviewing reports on WesCorp's activities, by reviewing and approving actions and decisions of WesCorp officers and employees, and by directing WesCorp's officers to follow the directions of the NCUA and its on-site examiner. Without limiting the foregoing, on information and belief the Board adopted certain policies that addressed WesCorp's investment strategies, risk assessment efforts, purchases of



1 MBS, the review and approval of concentration limits and risk assessment efforts,  
2 approval and authorization of investments in MBS, and approvals of specific  
3 purchases of MBS. Siravo complied with such policies and directives to the extent  
4 they were applicable to his scope of duties. Moreover, on information and belief  
5 the Board directed its officers to follow the guidance and direction of the NCUA  
6 in all respects, which direction Siravo followed to the extent applicable to his  
7 scope of duties.

8 259. As the Board was aware at all relevant times, WesCorp had a long  
9 history of purchasing securities with the same type of collateral -- mortgages -- as  
10 Option ARM MBS. On information and belief, the Board knew of and acquiesced  
11 in WesCorp's investment in Option ARM MBS and never suggested that Option  
12 ARM MBS were a "new" security type which WesCorp should review as such.

13 260. The Board consistently approved of WesCorp's investment strategies  
14 and investment concentrations, including WesCorp's investments in Option ARM  
15 MBS, lower tranche MBS, and reduced documentation MBS.

16 261. On information and belief, the Board also knew and approved of  
17 WesCorp's investment related and credit risk management policies and  
18 procedures, including, without limitation, the policies and procedures for limiting  
19 investments to primarily high grade securities with AA and AAA ratings, for  
20 conducting credit reviews or proposed security purchases prior to purchasing, for  
21 conducting credit reviews on newly-issued security types, for conducting annual  
22 credit reviews on existing securities, for preparing monthly watch lists and  
23 overseeing securities that were underperforming, for creating concentration limits,  
24 and for publishing monthly reports on credit status.

25 262. On information and belief, the Board knew and approved of  
26 WesCorp's investment strategies and risk management efforts.

27 263. In those instances, to the extent there were any, where the NCUA  
28 raised any concerns regarding WesCorp's risk assessment efforts, WesCorp

1 promptly addressed those concerns, and the NCUA and the Board subsequently  
2 approved of WesCorp's remedial efforts.

3 264. As for the SERP claims, they are barred because the WesCorp Board  
4 was fully informed about the nature, purpose, and effect of the proposed SERP  
5 amendments (to both the Siravo SERP and the Executive SERP). The Board was  
6 fully aware that both SERPs would be modified, and were fully cognizant of the  
7 financial effect the SERP amendments would have on WesCorp. In fact, the  
8 documents which the NCUA alleges are false and misleading, and form the basis  
9 of the SERP claims, were largely written by WesCorp Board members themselves.

10 265. Siravo and Swedberg disclosed to the Board all relevant and material  
11 information regarding the SERP amendments, and the Board authorized all of the  
12 actions taken.

13 266. In light of the foregoing, the Board knowingly consented to, approved  
14 of, acquiesced in, authorized and/or ratified each and every activity that the NCUA  
15 now challenges as improper.

### 16 **THIRD AFFIRMATIVE DEFENSE**

#### 17 (Business Judgment Rule, Due Diligence and Reasonable Investigation)

18 267. Siravo and Swedberg incorporate by reference and re-allege each and  
19 every allegation contained in paragraphs 245 to 266 as though fully set forth  
20 herein

21 268. The First and Seventh Claims for Relief are barred by the business  
22 judgment rule in that every act or omission challenged by the NCUA was made  
23 after reasonable investigation based upon reasonable grounds to believe that such  
24 acts or omissions were reasonable and prudent under the circumstances, because  
25 every act or omission challenged met or exceeded the custom and practice in the  
26 industry and was undertaken in good faith, with full candor, and in what Siravo  
27 honestly believed to be the best interests of WesCorp.

**FOURTH AFFIRMATIVE DEFENSE**

**(Intervening or Superseding Causes)**

269. Siravo and Swedberg incorporate by reference and re-allege each and every allegation contained in paragraphs 245 to 268 as though fully set forth herein

270. The NCUA's Claims are barred, in whole or in part, because any damages alleged therein were the result of one or more superseding causes or were caused by the acts and/or failures to act of persons and/or entities other than Siravo or Swedberg, and were not the result or any act or omission on the part of Siravo or Swedberg.

271. Such intervening and supervening causes include but are not limited to the fact that all investments made by WesCorp, all investment policies adopted by WesCorp, and/or the amendments to the SERPS were approved, authorized and/or ratified by WesCorp's Board of Directors and/or committees of that Board.

272. Such intervening and superseding causes also include but are not limited to the worldwide credit crunch and other macroeconomic and mortgage industry events that constrained WesCorp's access to credit and capital markets, affected its liquidity, and caused sharp and unforeseen drops in the value of its investment portfolio.

**FIFTH AFFIRMATIVE DEFENSE**

**(Statute of Limitations)**

273. Siravo and Swedberg incorporate by reference and re-allege each and every allegation contained in paragraphs 245 to 272 as though fully set forth herein

274. The NCUA's Claims are barred, in whole or in part, by the applicable statute(s) of limitations.

**SIXTH AFFIRMATIVE DEFENSE**

**(Reliance on others)**

275. Siravo and Swedberg incorporate by reference and re-allege each and every allegation contained in paragraphs 245 to 274 as though fully set forth herein

276. The NCUA's Claims are barred, in whole or in part, because the acts and conduct of Siravo and/or Swedberg, including but not limited to the purchases of securities and amendments of, and/or changes to, the SERPs, were made or occurred in reasonable good faith reliance on the statements, representations, and approvals of others upon whom they was entitled to rely, including but not limited to the WesCorp Board of Directors, individual directors, the ALCO, NCUA personnel and examiners, rating agencies, underwriters, brokers, issuers, auditors, investment bankers, financial advisors, and counsel.

**SEVENTH AFFIRMATIVE DEFENSE**

**(Apportionment)**

277. Siravo and Swedberg incorporate by reference and re-allege each and every allegation contained in paragraphs 245 to 276 as though fully set forth herein

278. Any damages that the NCUA may have suffered should be apportioned according to the relative degrees of fault of other persons and/or entities responsible for the NCUA's damages, including but not limited to NCUA personnel and examiners, rating agencies, underwriters, brokers, issuers, auditors, investment bankers, financial advisors, and counsel, and any alleged liability of Siravo and Swedberg should be reduced accordingly.

**EIGHTH AFFIRMATIVE DEFENSE**

**(No Entitlement to Exemplary or Punitive Damages)**

279. Siravo and Swedberg incorporate by reference and re-allege each and every allegation contained in paragraphs 245 to 278 as though fully set forth herein

280. NCUA is precluded from recovering exemplary or punitive damages, either in whole or in part, under the applicable provisions of the law, including,

1 without limitation, California Civil Code section 3294, the United States  
2 Constitution and/or the California Constitution.

3 **NINTH AFFIRMATIVE DEFENSE**

4 **(Set Off)**

5 281. Siravo and Swedberg incorporate by reference and re-allege each and  
6 every allegation contained in paragraphs 245 to 280 as though fully set forth herein

7 282. The Second Amended Complaint, and each cause of action alleged  
8 therein against Siravo and Swedberg, is subject to their rights of set off with respect  
9 to monies owed to them by WesCorp and/or the NCUA.

10 **COUNTERCLAIMS**

11 For counterclaims, Siravo and Swedberg allege:

12 **JURISDICTION**

13 283. The Court has supplemental jurisdiction over these counterclaims  
14 under 28 U.S.C. § 1367(a), because these counterclaims and the purported claims  
15 alleged by the NCUA all form part of the same case or controversy concerning the  
16 parties' rights and responsibilities related to Siravo's and Swedberg's service as  
17 officers and employees of WesCorp.

18 **PARTIES**

19 284. Siravo served as President/CEO of WesCorp from May 1, 2002 to on  
20 or about March 20, 2009. Swedberg was employed by WesCorp from October  
21 1998 until he retired in July 2009. He was the Director of Human Resources from  
22 October 1998 and served as the Vice President of Human Resources in 1999 until  
23 approximately April or May 2007. He then served as Vice President of Strategic  
24 Planning and Organizational Development until December 31, 2008, and was  
25 thereafter employed on a consultant basis until he retired in July 2009.

26 285. Counter-defendant National Credit Union Administration Board as  
27 Liquidator of Western Corporate Federal Credit Union ("NCUA") is the liquidating  
28



1 agent of WesCorp.

## 2 **FACTUAL ALLEGATIONS**

### 3 **Policy 21**

4 286. WesCorp's Board of Directors adopted a resolution regarding  
5 indemnification and insurance, codified in WesCorp's book of policies as "Policy  
6 21."

7 287. WesCorp agreed in Policy 21 to indemnify WesCorp's current and  
8 former "officials" and "employees" "to the maximum extent permitted by either the  
9 laws of the state of California or the Model Business Corporation Act" (the  
10 "MBCA") "for any liability asserted against them in connection with judicial or  
11 administrative proceedings, formal or informal, to which they are or may become  
12 parties by reason of the performance of their official duties."

13 288. WesCorp also agreed in Policy 21 that the indemnification "shall  
14 include the recovery of reasonable costs and attorneys fees incurred by an  
15 individual so indemnified if such individual is required to engage the services of  
16 any attorney. . .to secure the indemnity provided herein."

17 289. WesCorp also agreed in Policy 21 to "purchase and maintain  
18 insurance" on behalf of current and former officials and employees "against any  
19 liability asserted against them and expenses reasonably incurred by them in their  
20 official capacities and arising out of the performance of their official duties to the  
21 extent such insurance is permitted by the applicable state law or the Model Business  
22 Corporation Act[.]"

### 23 **The NCUA's Refusal to Pay Attorney's Fees**

24 290. On January 10, 2011, Siravo and Swedberg Defendants submitted a  
25 request to the NCUA as Liquidating Agent for WesCorp for reimbursement of past  
26 defense costs incurred in defending this litigation, payment of any future defense  
27 costs that they might incur in this case, and payment for any costs they incur in  
28 establishing their right to indemnity.

1           291. The Liquidating Agent has not agreed to these requests of Siravo and  
2 Swedberg.

3           292. All of the claims asserted by the NCUA against Siravo and Swedberg  
4 in this litigation “arise out of the performance of their official duties” as officers  
5 and employees of WesCorp.

6           293. Siravo and Swedberg have incurred, and continue incur, damages in  
7 the form of attorney’s fees and costs in connection with the defense of the claims  
8 asserted by the NCUA as Liquidating Agent for WesCorp in this litigation.

9                                   **FIRST COUNTERCLAIM**

10                           (Breach of Obligation to Pay Litigation Costs Under Policy 21)

11           294. Siravo and Swedberg incorporate by reference and re-allege each and  
12 every allegation contained in paragraphs 283 to 293 as though fully set forth herein.

13           295. WesCorp agreed in Policy 21 to indemnify Siravo and Swedberg “to  
14 the maximum extent permitted by either” California law *or* the MBCA.

15           296. The MBCA provides that a corporation must advance defense costs if  
16 the corporation has promised by resolution or otherwise indemnification “to the  
17 fullest extent permitted by law,” as WesCorp did in Policy 21. MBCA §8.58  
18 expressly states that any such resolution “shall be deemed to obligate the  
19 corporation to advance funds to pay for or reimburse” the defense costs before final  
20 disposition of the case.

21           297. Siravo and Swedberg have performed all of their obligations under  
22 Policy 21 except to the extent that their performance has been excused by the  
23 actions of WesCorp and/or the NCUA. Siravo and Swedberg have offered to  
24 provide to the NCUA as liquidator of WesCorp the written affirmation and  
25 undertaking required for advancement attorneys fees by MBCA §8.53 that they  
26 conducted themselves in good faith in what they reasonably believed was in the  
27 best interests of WesCorp and to repay any advanced funds if it is ultimately  
28 determined that they are not entitled to mandatory indemnification or that they did

1 not meet the standard of conduct under section 8.51.

2 298. NCUA as liquidator of WesCorp is liable for WesCorp's obligations  
3 and is obligated to reimburse Siravo and Swedberg for defense costs incurred in  
4 this litigation under the provisions of the MBCA that are adopted by WesCorp in  
5 Policy 21.

6 299. The NCUA has failed to reimburse Siravo and Swedberg for the  
7 defense costs they have incurred in this litigation.

8 300. Siravo and Swedberg have incurred damages as a result of the  
9 NCUA's breach of WesCorp's obligation in Policy 21 to reimburse them for their  
10 defense costs incurred in this litigation, which exceed \$100,000 through September  
11 2011, in an amount to be determined through a dispositive motion or at trial.

12 **SECOND COUNTERCLAIM**

13 (Payment of Litigation Costs Under California Labor Code 2802)

14 301. Siravo and Swedberg incorporate by reference and re-allege each and  
15 every allegation contained in paragraphs 283 to 300 as though fully set forth herein.

16 302. At all relevant time, Siravo and Swedberg were employees of  
17 WesCorp.

18 303. California Labor Code Section 2802 provides that an employer "shall  
19 indemnify his or her employee for all necessary expenditures or losses incurred by  
20 the employee in direct consequence of the discharge of his or her duties[.] "

21 304. NCUA as liquidator of WesCorp is obligated to reimburse Siravo and  
22 Swedberg for their defense costs as they are incurred in this litigation under  
23 California Labor Code Section 2802.

24 305. Siravo and Swedberg have incurred and paid attorneys fees and costs  
25 in defense of the claims asserted by NCUA as liquidator of WesCorp in this  
26 litigation.

27 306. The NCUA has failed to reimburse Siravo and Swedberg for the  
28 attorney's fees and costs they have paid to date.

1           307. Siravo and Swedberg have incurred damages as a result of the  
2 NCUA's breach obligation under California Labor Code 2802 as liquidator of  
3 WesCorp to reimburse Siravo and Swedberg for their attorney fees and costs, which  
4 exceed \$100,000 through September 2011, and will incur damages in the future if  
5 the NCUA fails to reimburse them for any litigation costs they pay in the future in  
6 an amount to be determined through a dispositive motion or at trial.

7                                   **THIRD COUNTERCLAIM**

8                                   (Indemnification under Policy 21)

9           308. Siravo and Swedberg incorporate by reference and re-allege each and  
10 every allegation contained in paragraphs 283 to 307 as though fully set forth herein.

11           309. WesCorp agreed in Policy 21 to indemnify Siravo and Swedberg "to  
12 the maximum extent permitted by either" California law *or* the MBCA.

13           310. Siravo and Swedberg have demanded that the NCUA, as liquidator of  
14 WesCorp, indemnify them under Policy 21 to the fullest extent permissible under  
15 either California law or the MBCA and/or defense costs to the fullest extent  
16 permissible under either California law or the MBCA.

17           311. Siravo and Swedberg have incurred damages as a result of the  
18 NCUA's failure to reimburse them for their attorney fees and costs, which exceed  
19 \$100,000 through September 2011, and they will incur additional damages in an  
20 amount to be determined through a dispositive motion or at trial if the NCUA  
21 refuses to indemnify them for such fees and costs pursuant to Policy 21.

22                                   **FOURTH COUNTERCLAIM**

23                                   (Breach of Obligation to Provide Insurance)

24           312. Siravo and Swedberg incorporate by reference and re-allege each and  
25 every allegation contained in paragraphs 283 to 311 as though fully set forth herein.

26           313. WesCorp promised in Policy 21 to "purchase and maintain" insurance  
27 "against any liability asserted against" current and former officials and employees,  
28 including but not limited to Siravo and Swedberg.

314. WesCorp purchased an insurance policy from CUMIS Insurance Society, but CUMIS Insurance Society has denied coverage under the insurance policy for the claims asserted against Siravo and Swedberg in this action.

315. WesCorp breached the promise in Policy 21 to provide insurance coverage for Siravo and Swedberg because CUMIS has denied coverage for the claims asserted against them in this action and, therefore, the insurance policy does not cover Siravo and Swedberg for “any liability” asserted against them.

316. The NCUA as liquidator of WesCorp is liable for WesCorp's obligations.

317. The NCUA, after putting WesCorp into conservatorship, compounded the damage to Siravo and Swedberg by canceling the CUMIS Policy, by refusing to obtain replacement insurance, and by refusing CUMIS' offer of supplemental insurance with fewer coverage exclusions than the CUMIS Policy.

318. If WesCorp had complied with its obligations in Policy 21 and obtained adequate insurance coverage, Siravo and Swedberg would have been covered for all of the costs and claims related to this litigation.

319. Siravo and Swedberg have performed all of their obligations under Policy 21 except to the extent that their performance has been excused by the actions of WesCorp and/or the NCUA.

320. Siravo and Swedberg have incurred damages for their unreimbursed attorney's fees and costs, which exceed \$100,000 through September 2011.

321. Siravo and Swedberg will continue to incur damages in this litigation in an amount to be determined through dispositive motion or at trial, as a result of the WesCorp's failure to obtain insurance as required by Policy 21

## PRAYER

WHEREFORE, Siravo and Swedberg pray for judgment against plaintiffs as follows:

1. That Plaintiff NCUA as Liquidating Agent for WesCorp takes nothing



1 by the Complaint and that the Complaint be dismissed with prejudice.

2 2. That judgment be entered in favor of Siravo and Swedberg, and  
3 against Plaintiff.

4 3. That the NCUA be ordered to reimburse Siravo and Swedberg for the  
5 defense costs they have incurred in this litigation.

6 4. That Siravo and Swedberg be awarded damages on their  
7 counterclaims, in amounts to be determined through dispositive motions or at trial.

8 5. That the Court adjudge and declare that NCUA is obligated to pay to  
9 advance to Siravo and Swedberg their defense costs incurred in this action and to  
10 the fullest extent any liability incurred by Siravo and Swedberg.

11 6. That Siravo and Swedberg be awarded their costs and reasonable  
12 attorneys' fees.

13 7. That Siravo and Swedberg be granted such other and further relief as  
14 the Court may deem just and proper.

15 **DEMAND FOR JURY TRIAL**

16 Siravo and Swedberg hereby demand a jury trial

17  
18 Dated: October 31, 2011

RICHARD E. DROOYAN  
LAURA D. SMOLOVE  
Munger, Tolles & Olson LLP

20  
21 By   
22 RICHARD E. DROOYAN

23 Attorneys for Robert A. Siravo and  
24 Thomas E. Swedberg

**PROOF OF SERVICE**

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES:

I, the undersigned, declare that I am over the age of 18 and not a party to the within cause. I am employed by Munger, Tolles & Olson LLP in the County of Los Angeles, State of California. My business address is 355 South Grand Avenue, Thirty-Fifth Floor, Los Angeles, California 90071-1560.

On October 31, 2011, I served upon the interested parties in this action the foregoing document described as:

**AMENDED ANSWER AND COUNTERCLAIM OF  
DEFENDANTS ROBERT A. SIRAVO AND THOMAS E.  
SWEDBERG TO SECOND AMENDED COMPLAINT**

☒ By placing ☐ the original(s) ☒ a true and correct copy(ies) thereof, as set out below, in an addressed, sealed envelope(s) clearly labeled to identify the person(s) being served at the address(es) set forth on the attached service list.

☒ **BY MAIL (AS INDICATED ON THE ATTACHED SERVICE LIST)** I caused such envelope(s) to be placed in interoffice mail for collection and deposit in the United States Postal Service at 355 South Grand Avenue, Thirty-Fifth Floor, Los Angeles, California, on that same date, following ordinary business practices. I am familiar with Munger, Tolles & Olson LLP's practice for collection and processing correspondence for mailing with the United States Postal Service; in the ordinary course of business, correspondence placed in interoffice mail is deposited with the United States Postal Service with first class postage thereon fully prepaid on the same day it is placed for collection and mailing.

☐ **BY FEDERAL EXPRESS PRIORITY OVERNIGHT DELIVERY (AS INDICATED ON ATTACHED SERVICE LIST)** I delivered the sealed Federal Express envelope(s) to an employee authorized by Federal Express to receive documents, with delivery fees paid or provided for.

☐ **BY FACSIMILE (AS INDICATED ON ATTACHED SERVICE LIST)** By causing to be sent a true and correct copy(ies) of said document via facsimile transmission. The transmission was reported as complete and without error. A true and correct copy of the machine's transmission report, indicating the date and time that the transmission was completed without error is attached to this proof of service and is incorporated herein by this reference. The telephone number of the facsimile machine I used was (213) 683-9510. This facsimile machine complies with Rule 2003(3) of the California Rules of Court.

☐ **(STATE)** I declare under penalty of perjury that the foregoing is true and correct.

☒ **(FEDERAL)** I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

*See attached Service List*

Executed on October 31, 2011, at Los Angeles, California.

  
Myrna G. Perez

Service List

*National Credit Union Administration Board v. Siravo, et al.*

Case 2:10-cv-01597-GW -MAN

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Michelle Kimiko Sugihara  
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